

Application Serial No. 10/045,335
Attorney Docket No. 67334

(3) REMARKS

I. Claim Rejections Under 35 USC §112

The claims have been amended to eliminate the bases for rejection itemized by the examiner.

II. Claim Rejections Under 35 USC §102

Claims 1-8 have been rejected under 35 USC §102, as being anticipated by Wampler, *et al.* [U. S. Patent No. 5,759,599]. This rejection is respectfully traversed.

The invention provides suitably constructed flavor capsules which will maintain structural integrity within a variety of types of candy pieces and thereby provide a novel and enhanced flavor delivery means. The claims all call for "a hydrophilic flavor encapsulated within a gelatin shell". The candies in their preferred forms provide "a distinct 'flavor burst' when the confection is chewed or allowed to melt in the mouth" and in some forms the encapsulated portions are large enough that there is a "feel of liquid release". The flavors suitable for this purpose are hydrophilic by nature or by the use of humectants or emulsifiers to provide a quick wetting in the mouth and quick flavor release. It has not been practical for the inventors to obtain similar candy products – centers filled with hydrophilic flavors – before the concept of the invention was developed. The hydrophilic flavors would tend to destabilize themselves or the candy coating without the encapsulation technique of the invention.

The reference to Wampler, *et al.*, is cited by the examiner for its teachings of hydrophobic flavors and does not either anticipate or otherwise teach the invention. Accordingly, reconsideration and withdrawal of the rejection are believed in order.

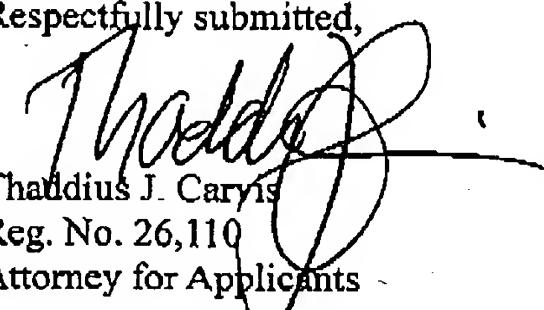
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While not seen important to overcoming the current rejection, applicants point out that the terms "hard", "chewy" and "gummy", when placed in the context of candy are meaningful to the person skilled in the art. Moreover, the terms are defined in the specification. In view of the definitions of these terms and their known meanings as defining types of candy, they are seen to properly set the context for the terms in the body of the claims and give life and meaning to them. As such, the terms should be given patentable weight.

The other references cited, but not applied, have been considered but are not seen to cure the defects of the cited Wampler, *et al.*, reference or present a combination which would lead the person skilled in the art to the invention as claimed. Each of the other references is directed to specific problems not faced by Wampler, *et al.*, nor important to the skilled worker dealing with the products of Wampler, *et al.* The invention is directed to different products and procedures.

Applicant has made a significant advance in the art of candy making by providing unique and effective flavor component in combination with confections having structure and characteristics neither disclosed nor made obvious by the art of record. The claims clearly and concisely set this invention out in terms that patentably distinguish from the prior art. Accordingly, reconsideration and allowance of all claims are believed in order, and such actions are earnestly solicited.

Respectfully submitted,


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